

1. The subject property consists of approximately 2.9 acres and is composed of two parcels. The site is located on the south side of Faulkner Place at its terminus, in Wheaton, Maryland. It has a mildly sloping terrain, many mature trees and extensive landscaping along its perimeter. The property is zoned R-60.
2. The surrounding neighborhood consists of commercial and residential properties. The property abutting to the north and east of the subject site is zoned C-2 and is developed as Wheaton Plaza, a commercial shopping center. The properties to the south and west are zoned R-60 and developed with residential uses.
3. The community pool, with tennis courts, bathhouse and associated parking, has operated by special exception on the property since 1956. The current bathhouse is in the basement of the facility, and has no handicap fixtures or stalls. Access to the bathhouse is only through stair flights from the pool level and stair flights from the entry at the guard shack.
4. The applicant seeks to modify the special exception to construct a new bathhouse with a pool office and meeting room. The modification would bring the facility up to existing codes and meet all requirements under the Americans with Disabilities Act (ADA). The hours of operation, numbers of staff (15-18 full and part time), and clientele/members (350-400 families) will remain the same. Therefore, the new facility will not increase the intensity of the pool's activities or generate additional traffic.
5. The applicant submitted a site plan (Exhibit 4) and elevations (Exhibit 5) for the proposed new bathhouse.
6. The 1990 Wheaton Central Business District and Vicinity Plan covering the property supports the existing R-60 zone for the subject property and community swim clubs are allowed by special exception in that zone.
7. The Maryland-National Capital Park and Planning Commission (M-NCPPC) reviewed the proposed modification of the special exception and recommended approval of the application with conditions.
8. M-NCPPC Technical Staff determined that construction of the new bathhouse is exempt from the requirements of the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) because the original special exception use was approved prior to July 1, 1991 and because the modification does not result in the clearing of more than 5,000 square feet of forest.

9. The site lies in the Kensington Heights Branch of the Lower Rock Creek watershed, where the stream system is channelized, creating high runoff velocities from uncontrolled storm flow. Therefore, M-NCPPC Technical Staff determined that full water quality and quantity control is needed to protect the watershed. M-NCPPC recommends that a stormwater management concept and sediment/erosion control plan be submitted at the time of the preliminary plan of subdivision.
10. Donna Savage, President of the Kensington Heights Citizen Association, testified in support of the proposed modification, and the Board received a Petition signed by several community members in support of the proposed modification (Exhibit 17).

### **FINDINGS OF THE BOARD:**

#### **GENERAL STANDARDS**

The proposed modification meets the requirement set forth in Section 59-G-1.2.1, specifically:

*59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.*

The proposed modification will not result in any inherent or non-inherent adverse effects. The modification will not have an adverse impact on the inherent characteristics of the use. The requested modification focuses on a new bathhouse to meet ADA standards. This modification is structural in nature and is not anticipated to result in an increase in adverse operational characteristics such as traffic or noise to the site. Nor will the modification result in any non-inherent adverse effect.

#### **SPECIFIC STANDARDS**

The proposed modification complies with the standards and requirements set forth for the use in Section 59-G-2.56, specifically:

*The provisions of subsection 59-G-1.21(a) shall not apply to this section. In any zone, a community swimming pool may be allowed, upon a finding by the board that such use will not affect adversely the present character or future development of the surrounding residential community, and that such use of land will conform to the following minimum requirements:*

- (a) *The swimming pool, including the apron and any buildings, shall not at any point be closer than 75 feet from the nearest property line nor closer than 125 feet from any existing single-family or two-family dwelling; provided, that where the lot upon which it is located abuts a railroad right-of-way, publicly owned land or land in a commercial or industrial zone such pool may be constructed not less than 25 feet at any point from such railroad right-of-way, publicly owned land or commercial or industrial zone. Any buildings erected on the site of any such pool shall comply with the yard requirements of the zone in which the pool is located.*

The proposed bathhouse can satisfy the yard requirements for the R-60 zone.

- (b) *A public water supply shall be available and shall be used for the pool or use of a private supply of water for the pool will not affect adversely the water supply of the community.*

As the existing community pool is already served by public water, the proposed bathhouse will also be served by public water.

- (c) *When the lot on which any such pool is located abuts the rear or side lot line of, or is across the street from, any land in a residential zone, other than publicly owned land, a wall, fence or shrubbery shall be erected or planted so as to substantially screen such pool from view from the nearest property of such land in a residential zone.*

*Not applicable*

- (d) *The following additional requirements shall also be met: Special conditions deemed necessary to safeguard the general community interest and welfare, such as provisions for off-street parking, additional fencing or planting or other landscaping, additional setback from property lines, location and arrangement of lighting and other reasonable requirements, including a showing of financial responsibility by the applicant, may be required by the board as requisite to the grant of a special exception. Financial responsibility shall not be construed to mean a showing of a 100 percent cash position at the time of application but shall be construed to mean at least 60 percent.*

The existing community pool is well landscaped and maintained, and M-NCPPC found that this section of the Zoning Ordinance has been met.

The Board **grants** the application for the proposed modification to the special exception, subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion granting the special exception or variance.
2. Compliance with Chapter 50 of the County Code (the Subdivision regulations) will be required prior to the issuance of any building permits for new buildings on the subject site.
3. The applicant must comply with all requirements set by the County Department of Permitting Services for stormwater management and sediment/erosion control, at the time it submits its preliminary plan to the M-NCPPC.
4. All terms and conditions of the approved special exception shall remain in full force and effect.

On a motion by Donna L. Barron, seconded by Donald H. Spence, Jr., Chairman, with Allison Ishihara Fultz, Louise L. Mayer, and Angelo Caputo, in agreement, the Board adopted the following Resolution.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 28th day of February , 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the Zoning Ordinance). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.